THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.23748 OF 1997

3rd AUGUST, 2006

BETWEEN

D.Narasaiah and others.

… Petitioners

vs.

The Mandal Revenue Officer, Ghatkesar Mandal, Ranga Reddy

… Respondent

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.23748 OF 1997

ORDER:

The five petitioners were allegedly assigned agricultural land in survey Nos.166 and 259 admeasuring Acs.1.20 guntas each situated at Kondapur village, Ghatkesar Mandal. They alleged that they occupied and brought the land under cultivation. However, it appears, some of the moneylenders occupied the land alleging that they purchased the land from the petitioners. Therefore, the petitioners approached the respondent requesting to restore possession of the land under Section 4(1)(b) of A.P.Assigned Lands (Prohibition of Transfers) Act, 1977, in vain. Therefore, they filed the instant writ petition seeking a direction to the respondent to restore possession of the land in survey Nos.166 and 259 after vacating the occupants of the land.

Counter affidavit is filed by the MRO. It is admitted that the land in survey Nos.166 and 259 of Kondapur village was assigned to thirteen persons. But the assignees or legal heirs sold away the land assigned to them, and therefore, action was initiated under the

provisions of the Act and A.P.Assigned Lands (Prohibition of Transfers) Rules, 1977 and show cause notice was issued to the purchasers. However, immediate orders could not be passed but ultimately proceedings were issued on 21.04.2005 for resumption of the land and the land was taken possession under cover of Panchanama on 21.05.2005. It is also stated that the petitioners are not entitled for restoration of possession as the land is prime valuable land situated very near to the village and at present there is no agricultural activity in the vicinity.

Learned counsel placed strong reliance on Section 4(1)(b) of the Act, which prohibits that the MRO after resuming/taking possession of the assigned lands after evicting person in possession, is required to restore the assigned land to the original assignees or his legal heirs. The learned Assistant Government Pleader, **per contra**, disputes the right of the petitioners for restoration of the land and would place reliance on a recent decision delivered by me in W.P.No.16553 of 2005, dated 20.07.2006 (unreported).

The submission that an assignee who in contravention of the provisions of the Act alienated the land is entitled for automatic restoration of the land after resumption from the illegal occupants cannot be accepted. Having regard to the language used in Section 4(1)(b) of the Act, this Court has considered this aspect of the matter in the Judgment referred to hereinabove. It was held therein.

> It is well settled Rule of interpretation that a clause or subsection in a Section cannot be read in isolation nor it is permissible for the Court to ignore the plain language and the terminology used by the Legislature while conferring a benefit or taking of a benefit from a person. Applying the said principle, Section 4(1)(b) of the Act must be read as enabling an assignee, who suffered an order of resumption under Section 4(1)(a) of the Act, only when the land which was resumed is available for assignment and when it is reasonably practicable to restore the land to the assignee or the legal heir. There could be number of situations when it may not be reasonably practicable to restore the land to the assignee even if the land is available. In **P.Gopal Reddy v. Mandal Revenue Officer**[1], His Lordship Justice K.Ramaswamy (as His Lordship then was) considered a similar question. Dealing with this aspect of the matter, it was laid down as under.
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> > 10. Ejectment of the persons in possession of the assigned lands under the void transfer is mandatory save as covered by Sec.3(5) of the Act. The Collector or the authorized officer is enjoined to have the transferee ejected and restitute possession only once to

> the assignee or his legal heirs if available. The restitution to the assignee or his heirs, in the first instance, despite the contravention by the assignee, is mandatory. In case he commits contravention once over, it is mandatory that the State shall resume the land, but in either case, the assignment of the said land "shall be to another landless poor person for the purpose of cultivation or in case of assignment for house site, for the purpose of construction of house for residence which is a fundamental right under Article 19(1)(e). The petitioner, thereby, is normally entitled to restoration of possession. The question then emerges is whether the Collector is justified in his failure to restitute the land to the petitioner.
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> 11. It is seen from the undisputed facts that though the land in question was assigned only for the purpose of cultivation, it no longer subserves the original purpose viz., cultivation as it now became the Urban property fit for construction of houses. In fact, the transferee laid 32 plots and sought approval from the second respondent. By virtue of the changed circumstances, the petitioner will no longer be in a position to cultivate the assigned land. His transfer for the purpose of house sites again would be in contravention of not only under the terms of the grant, but also is void under the Act. Thereby, the petitioner cannot be restituted the assigned lands.

In this case, it is the case of the respondent that there is no agriculture in the land comprised in survey Nos.166 and 259 of Kondapur village and that the land is well suited for provision of house sites. Therefore, direction cannot be issued to the respondent to restore the possession to the petitioners. If the petitioners are aggrieved, they may obtain a copy of the resumption order and challenge before appropriate authority. No relief can be granted in this writ petition.

The writ petition is accordingly dismissed. No costs.

(V.V.S.RAO,J)

03.08.2006
pln

[1] 1990(1) An.W.R.205=1989(3) ALT 14 (NRC)